

AG Contract No.: KR04-1349TRN
ADOT ECS File No.: JPA 04-051
Project: SR 989, MP 35.30
Section: Tangerine Road at Innovation Park Dr
TRACS No.: H6160 01C
Budget Source Item No.: 15006

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF ORO VALLEY

THIS AGREEMENT is entered into 29 November, 2004, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF ORO VALLEY, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State and the Town desire to participate in the construction and maintenance of a new warranted traffic signal located on State Route (SR) 989 (Tangerine Road) at Innovation Park Drive, at Milepost (MP) 35.30, at an estimated cost of \$148,000.00, hereinafter referred to as the "Project", for the safety and benefit of the traveling public. The State will provide design and construction and the Town will be responsible for the cost of the Project, all electrical energy for the operation of the traffic signal, illumination and maintenance.

4. It is understood and agreed to by all parties, that the Town, upon execution of this Agreement, shall deposit, an estimated amount of \$148,000.00 in an Escrow Account with the Arizona State Treasurers Office, as its pledge to totally fund the Project referenced herein. However, should the Town not provide the necessary funds stated herein, the State is no way obligated to fund the Town's Project and the Town shall be responsible for all cost accrued by the State, up to the time of cancellation of this Agreement.

5. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to this Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27248
Filed with the Secretary of State
Date Filed: 11/29/04
Janice K. Brewer
Secretary of State

By: Dan J. Graenewald

II. SCOPE OF WORK

1. The State will:

a. Upon 15 days after execution of this Agreement, withdraw from the State Treasurers Escrow Account for costs associated with the Project.

b. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit same to the Town for concurrence.

c. Advertise for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the State.

d. Upon completion of the Project, perform the final inspection and notify the Town in writing that the Project has been constructed in accordance with the project documents and has been satisfactorily completed.

2. The Town will:

a. Review the design documents required for construction of the Project and provide comments to the State as appropriate.

b. In the event unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's Scope of Work, such additional costs shall require prior approval of the State. All costs attributable to any engineering change orders requested by the Town shall be the sole responsibility of the Town.

c. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the Town.

d. Provide video detection equipment for the signals at the intersection of Tangerine Road and Innovation Park Drive per the Project design plans.

e. Upon completion of the Project and acceptance of the traffic signal, provide maintenance to the signals and ancillary equipment; provide response associated with emergency maintenance within 30 minutes of notification and provide electrical power to operate the signal, all at the Town's expense.

f. Be responsible for 100% of the estimated cost at \$148,000.00 for the traffic signal Project and any increases over the estimated cost of the Project, for the cost associated with the Project.

g. Upon execution of this Agreement, deposit said funds in an Escrow Account with the Arizona State Treasurers Office in an estimated amount of \$148,000.00.

h. Should either party cancel this Agreement and if no charges or expenditures have been issued, the Town will be refunded 100% of the deposited money.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and reimbursements; as provided herein. However, any provisions for maintenance, access, and electrical energy provided by the Town shall be perpetual. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the Town fails to budget or provide for proper and perpetual maintenance/electrical power as set forth in this Agreement, the State shall in no way be obligated to maintain said project.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

5. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

6. Non-Availability of Funds: Every payment obligation of the State and the Town under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State or the Town at the end of the period for which the funds are available. No liability shall accrue to the State or the Town in the event this provision is exercised, and the State or the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007
FAX : (602) 712-7424

Town of Oro Valley
ATTN: Craig Civalier
11000 N. La Canada Drive
Oro Valley, AZ 85737-7015
FAX: (520) 229-4899

9. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.


ORO VALLEY, ARIZONA
Board of Supervisors

By 
PAUL LOOMIS
Mayor

STATE OF ARIZONA
Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST

By 
KATHRYN CUEVELIER
Clerk

APPROVAL OF THE TOWN OF ORO VALLEY

I have reviewed the above referenced proposed intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and TOWN OF ORO VALLEY and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 5th day of November, 2004.



Town Attorney

RESOLUTION NO. (R) 04- 112

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND THE STATE OF ARIZONA FOR PROVIDING FUNDING FOR AND THE MAINTENANCE OF THE TRAFFIC SIGNAL AT THE INTERSECTION OF TANGERINE ROAD INNOVATION PARK DRIVE

WHEREAS, ORO VALLEY is a political subdivision of the State of Arizona, is vested with all the rights, privileges and benefits, and entitled to immunities and exemptions granted municipalities and political subdivisions under the constitution and laws of the state of Arizona and United States; and

WHEREAS, the funding for the traffic signal has been provided by Vistoso Partners and Northwest Hospital through a traffic light funding agreement with the Department of Public Works.

WHEREAS, providing maintenance for the traffic signal at the intersection of Tangerine Road and Innovation Park Drive is necessary for the public's health, safety and welfare in order to provide for the safe and efficient movement of traffic; and

WHEREAS, pursuant to Arizona Revised Status, Section 9-240 the Town is empowered to enter into this IGA; and

WHEREAS, the TOWN COUNCIL deems it necessary in the interest of providing for the health, safety and welfare of the citizens of the TOWN OF ORO VALLEY to enter into an intergovernmental agreement with the State of Arizona to provide funding and the maintenance for the traffic signal at the intersection of Tangerine Road and Innovation Park Drive.

THEREFORE, BE IT RESOLVED, BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA:

That Mayor is authorized to execute the intergovernmental agreement on behalf of the Town of Oro Valley.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona this 3RD day of NOVEMBER 2004.

TOWN OF ORO VALLEY, ARIZONA



Paul H. Loomis, Mayor

ATTEST:


Kathryn E. Cuvelier, Town Clerk

11-4-04
Date

APPROVED AS TO FORM:


Tobin Sidles, Acting Town Attorney

11-5-04
Date



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1349TRN (**JPA 04-051**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 22, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section